MUNICIPAL CORPORATIONS—SIDEWALKS—ICE CAUSED BY DRAINAGE FROM AWNING—AWNING NOT A NUISANCE.—A motion picture theatre had constructed an awning in such a manner that water drained from the awning onto the edge of the sidewalk. The plaintiff was injured by falling on ice which had frozen from this water. In an action against the city, *held*, that the awning was not such a nuisance that the city was bound to remove it. *Maine* v. *City of Des Moines*, (Iowa, 1921) 181 N. W. 248.

Where a city by its own act negligently permits water to collect and freeze on its walks, it is liable for injury proximately resulting to pedestrians. *Holbert* v. *Philadelphia*, 221 Pa. 266, (failure to keep a sidewalk under a viaduct properly drained); *Walsh* v. *New York*, 109 App. Div. 541, (leaky hydrant adjacent to a sidewalk). But generally the city cannot be held where the injury results from the act or omission of the abutting owner. *Hanrahan* v. *Chicago*, 145 Ill. App. 38, (awning falling on the plaintiff). But the city may be liable where it negligently allows the abutting owner to retain a nuisance, as where the abuttor's awning was constructed so near to the curb that a truck knocked out the support and caused the awning to fall on the plaintiff. *Mansfield* v. *New York*, 119 App. Div. 199. And where the city has been compelled to pay damages as a result of the abuttor's act of conveying water onto the sidewalk to freeze, it is entitled to reimbursement from the abutting owner. *New York* v. *Dimrick*, 49 Hun. 241. See 19 MICH. L. REV. 549. It seems that the abutting owner may be charged whenever he creates a condition which artificially causes water to flow upon the sidewalk and freeze so that the walk is rendered unsafe for pedestrians. *Canfield* v. *Chicago & W. M. R. Co.*, 78 Mich. 356, (water leaking from a water tank); *Malony* v. *Hayes*, 206 Mass. 1, (water from the defendant's roof); *Macauley* v. *Schneider*, 9 App. Div. 279, (water collecting under the abuttor's awning). But the abuttor cannot be charged if the water collected on the walk from natural rather than from artificial conditions. *Greenlaw* v. *Millikin*, 100 Me. 440.

NEGLIGENCE—ATTRACTIVE NUISANCE.—The defendants had at their station a mechanical moving staircase or escalator worked by an endless band. At the top, the band passed around a wheel where it was open to sight and touch, and was not fenced off or protected. The room was open to the street. There was a ticket collector at the bottom of the staircase and another behind a window in the booking hall. It was common practice for children to play upon the staircase, generally in the evening, by running down as far as they could without being caught by the ticket collector at the bottom. They were always warned off, and a railway policeman whose duty took him into the booking hall twice every hour, always drove the children away. On the evening of the accident, he drove them away, but later, they returned, and with them the plaintiff, a boy of five. The children looked around to see if the policeman was gone, and discovering that he was, commenced to play. Plaintiff caught his hand in the moving stairway and was injured so badly amputation was necessary. In an action for negligence, *held*, the plaintiff was a trespasser, and the defendants are not liable. *Hardy* v. *Central London Railway Co.*, [1920] 3 K. B. 459.

In this case involving the doctrine of an attractive nuisance, the English court distinguishes the leading case of *Cooke* v. *Midland & Gt. Western Ry.*, [1909] A. C. 229, in which an infant was injured by playing on a turntable, saying, "there the decision clearly proceeded upon the inference that the children resorted to the turntable with the tacit permission of the Railway Co.," while in the instant case the children deliberately did what they knew they were forbidden to do, and the warnings brought home to them negatived the allurement afforded by the moving staircase. The American cases, known as the "turntable" cases, 19 L. R. A. (N. S.) 1094, *Note*, do not emphasize this distinction, although in *Comer* v. *Winston-Salem*, 178 N. C. 383, discussed in 18 MICH. L. REV. 340, the court held where neighborhood children had been accustomed to play near a bridge, it was negligence not to provide sufficient protection for children watching the colored water rushing through under the bridge. Ever since the first case of this sort, *Railroad* v. *Stout*, 17 Wall. 657, citing the English case of *Lynch* v. *Nurdin*, 1 Q. B. 29, 10 L. J. Q. B. 73, the tendency has been to limit the application of the attractive nuisance doctrine. For a complete discussion see 5 MICH. L. REV. 357. It would seem as if the English court has worked out a distinction by asking whether the child is an invitee by tacit permission, but has not solved the difficulty, for it is always a question as to just what makes a tacit invitation, and one by no means easy of solution, although this test may be very effective in denying any further extension to new sets of facts of the "turntable" principle.

PARTIES—SUIT BY REPRESENTATIVES OF A CLASS—JURISDICTION OF FEDERAL COURTS.—Several hundred members of the Supreme Tribe of Ben-Hur, an Indiana fraternal beneficiary society, filed a bill in the United States District Court in Indiana, on their own behalf and as representatives of several thousand other members of the same class, to enjoin certain uses of trust funds held by the society. No Indiana members were individually named as parties. A decree was made. The Indiana members of the society subsequently commenced actions in the Indiana State courts involving the same matters decided in the federal case, and the question was presented whether the Indiana members were so far parties to the federal suit as to be bound by the federal decree and precluded from relitigating in the State courts. *Held*, on certificate to the United States Supreme Court, that all members of the class, both in and out of Indiana, were bound by the decree. *Supreme Tribe of Ben-Hur* v. *Cauble*, (U. S. Sup. Ct., No. 274), decided March 7, 1921.

This raises and settles a very interesting and important question. It was considered by the lower federal court that the Indiana members could not be deemed present in the suit by class representation because their presence would oust the court of jurisdiction, since the sole ground of federal jurisdiction was diverse citizenship. 264 Fed. 247. But the Supreme Court of the United States held that class suits were long known to the equity practice, that such a suit could have been maintained in a State court, that federal courts must be deemed to exercise as broad equity powers as State courts of equity, that unless a decree in such a suit would be binding on all members,